TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 62.

THE PEOPLE OF THE STATE OF NEW YORK EX REL. THE NEW YORK CLEARING HOUSE BUILDING COMPANY, PLAINTIFF IN ERROR,

vs.

EDWARD P. BARKER, THEODORE SUTRO, AND JAMES L. WELLS, COMMISSIONERS OF TAXES AND ASSESSMENTS OF THE CITY AND COUNTY OF NEW YORK.

IN ERROR TO THE COURT OF APPEALS OF THE STATE OF NEW YORK.

FILED MAY 8, 1899.

(17,399.)

SUPREME COURT OF THE UNITED STATES.

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THE PEOPLE OF THE STATE OF NEW YORK *EX REL.* THE NEW YORK CLEARING HOUSE BUILDING COMPANY, PLAINTIFF IN ERROR,

vs.

EDWARD P. BARKER, THEODORE SUTRO, AND JAMES L. WELLS, COMMISSIONERS OF TAXES AND ASSESSMENTS OF THE CITY AND COUNTY OF NEW YORK.

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a Court of Appeals of New York, on Appeal from the Appellate Division of the Supreme Court for the First Department.

THE PEOPLE OF THE STATE OF NEW YORK on the Relation of The New York Clearing House Building Company, Relator and Appellant,

against

EDWARD P. BARKER, THEODORE SUTRO, and JAMES L. WELLS, Commissioners of Taxes and Assessments of the City and County of New York, Respondents.

(Taxes of 1897.)

Papers on Appeal.

Opdyke, Willcox & Bristow, attorneys for relator and appellant, 20 Nassau street, borough of Manhattan, New York, N. Y.

John Whalen, attorney for respondents, 2 Tryon row, borough of Manhattan, New York, N. Y.

b STATE OF NEW YORK:

Court of Appeals, Clerk's Office.

To the judges of the United States Supreme Court:

The return of the judges of the court of appeals of the State of New York in pursuance to the writ of error in the case of The People of the State of New York on the relation of The New York Clearing House Building Company, appellant, *vs.* Edward P. Barker, Theodore Sutro, and James L. Wells, commissioners of taxes and assessments of the city and county of New York, respondents, taxes of 1897, is contained in the papers and proceedings hereto attached.

In witness whereof I have hereunto set my hand and affixed my official seal, at the city of Albany, this 29th day of April, A. D. 1899.

[Seal State of New York Court of Appeals.]

W. H. SHANKLAND,
Clerk of the Court of Appeals of the State of New York.

c Court of Appeals.

STATE OF NEW YORK, *ss:*

Pleas in the court of appeals, held at the capitol, in the city of Albany, on the 14th day of March, in the year of our Lord one thousand eight hundred and ninety-nine, before the judges of said court.

Witness the Hon. Alton B. Parker, chief judge, presiding.

W. H. SHANKLAND, *Clerk.*

Remittitur March 14th, 1899.

d THE PEOPLE, &c., *ex Rel.* THE NEW YORK Clearing House Building Company, Appellant,
ag'st
EDWARD P. BARKER & Others, Commissioners of Taxes, &c., Respondents.
} Taxes of 1897.

Be it remembered, that on the 31st day of January, in the year of our Lord one thousand eight hundred and ninety-nine, The New York Clearing House Building Company, the appellant in this proceeding, came here into the court of appeals, by Opdyke, Willcox & Bristow, Esqrs., its attorneys, and filed in the said court a notice of appeal and return thereto from the judgment & order of the appellate division of the supreme court in and for the first judicial department. And Edward P. Barker & others, commissioners of taxes, &c., the respondent- in said proceeding, afterwards appeared in said court of appeals by John Whalen, Esq., corporation counsel; which said notice of appeal and the return thereto, filed as aforesaid, are hereunto annexed.

e Whereupon, the said court of appeals having heard this cause argued by Mr. David Willcox, of counsel for the appellant, and by Mr. James M. Ward, of counsel for the respondents, and after due deliberation had thereon, did order and adjudge that the judgment and order of the supreme court appealed from in this proceeding, be in all things affirmed. And it was further ordered and adjudged that the respondent- recover against the appellant costs of appeal to this court.

And it was also further ordered, that the record aforesaid, and the proceedings in this court, be remitted to the said supreme court, there to be proceeded upon according to law.

f Therefore, it is considered that the said judgment & order be in all things affirmed with costs as aforesaid, and stand in full force, strength and effect.

And hereupon, as well *as* the notice of appeal and return thereto aforesaid as the judgment of the court of appeals aforesaid, by them given in the premises, are by the said court of appeals remitted into the supreme court of the State of New York, before the justices thereof, according to the form of the statute in such case made and provided, to be enforced according to law, and which record now remains in the said supreme court before the justices thereof, &c.

W. H. SHANKLAND,
Clerk of the Court of Appeals of the State of New York.

COURT OF APPEALS, CLERK'S OFFICE,
ALBANY, *March 14th*, 1899.

Seal State of New York Court of Appeals.

I hereby certify that the preceding record contains a correct transcript of the proceedings in said proceeding in the court of appeals, with the papers originally filed therein attached thereto.

W. H. SHANKLAND, *Clerk.*

1 N. Y. Supreme Court, Appellate Division, First Department.

THE PEOPLE OF THE STATE OF NEW YORK on the Relation of The New York Clearing House Building Company
against
EDWARD P. BARKER, THEODORE SUTRO, and JAMES L. WELLS, Commissioners of Taxes and Assessments of the City and County of New York.
} Taxes of 1897.

Statement under Rule 41.

The writ in this proceeding was issued on July 14th, 1897, pursuant to an order of the same date made by Hon. Charles H. Truax, J., allowing the same, and was served on the commissioners of taxes and assessments on July 15th, 1897, and was filed in the office of the clerk of the city and county of New York on July 17th, 1897. The return of the said commissioners thereto was filed and served on the attorneys for the relator on November 23d, 1897.

The names of the original parties in full were as above stated, and no change of parties or attorneys has taken place pending this proceeding.

2 *Order for Writ.*

At a special term, part II, of the supreme court of the State of New York held at the court-house in the city and county of New York on the 14th day of July, 1897.

Present: Hon. Charles H. Truax.

In the Matter of the Application of THE NEW YORK CLEARING HOUSE BUILDING COMPANY for a Writ of Certiorari to the Commissioners of Taxes and Assessments of the City and County of New York.

On reading and filing the petition of the above-named applicant, The New York Clearing House Building Company, verified July 13, 1897, and on motion of Opdyke, Willcox & Bristow, attorneys for said applicant, it is,

Ordered that a writ of *certiorari* be allowed and issued as prayed for in said petition, directed to Edward P. Barker, Theodore Sutro and James L. Wells, the commissioners of taxes and assessments of the city and county of New York; that a return thereto must be made and served upon the relator's attorneys within the time below specified; that said writ be returnable at a special term, part II, of this court to be held on the first Monday of September, 1897, at the county court-house in the city of New York, at the opening of court on that day, or as soon thereafter as a hearing can be had, and that said writ be allowed and signed and sealed by the clerk of this court.

Enter. C. H. T., *J.*

3 Supreme Court, New York County.

To the supreme court of the State of New York:

The petition of the New York Clearing House Building Company, claiming to be aggrieved by the assessment hereinafter specified, respectfully shows to this court as follows:

I. The petitioner was duly incorporated upon January 18, 1894, pursuant to the business corporation law of the State of New York, and ever since that time, by virtue thereof, has been engaged at the city of New York in performing the functions specified in its certificate of incorporation, namely: "The purchase of land and the erection, fitting and furnishing and the maintenance of buildings thereon in which there shall be accommodations secured for the use of the New York Clearing House Association." The petitioner is engaged in no other business whatsoever.

II. Upon the second Monday of January, 1897, the total of the shares of the capital stock of the petitioner was $900,000.

Its gross assets then were not more than	$629,953 99
This included amount invested in real estate in New York county, being both the assessed and actual value thereof.....	600,000 00
Balance	$29,953 99
The actual indebtedness of the petitioner then was ..	230,000 00

Therefore, on the second Monday of January, 1897, the total gross assets of the petitioner exclusive of its real estate did not exceed $29.953.99; on said second Monday of January, 1897, the indebtedness justly due and owing by the petitioner amounted to

4 $230,000. The petitioner, therefore, upon the said second Monday of January, 1897, had no personal property or capital stock whatsoever, which was subject to assessment or taxation in the city and county of New York.

III. One of the deputy tax commissioners in the city of New York, under the direction of the commissioners of taxes and assessments for that city and county, who then were and still are Edward P. Barker, Theodore Sutro and James L. Wells, between the first Monday of September, 1896, and the second Monday of January, 1897, assessed the petitioner upon the value of the personal property or capital stock of the petitioner, subject to assessment and taxation within that city and county in the sum of $236,683, and set down and included the same as the valuation for the purposes of assessment and taxation of the personal property or capital stock of the petitioner in the assessment lists or rolls or "annual record of the assessed valuation of real and personal estate," for the year 1897, kept in the office of said commissioners.

IV. Thereafter, and during the time that said assessment lists or rolls or annual record were open to public inspection and to correction by said commissioners, they notified the petitioner thereof and requested it to furnish a statement of its condition for purposes

of assessment on said second Monday of January, 1897. The petitioner, considering itself aggrieved by such assessment and valuation, in due time attended before said commissioners of taxes and assessments and duly made application to said commissioners to have such assessment and valuation corrected and altogether canceled, and made and delivered to said commissioners, in due form of law, a statement in writing under oath, truly and correctly showing its condition for the purposes of assessment on said second Monday of January, 1897, setting forth the matters and things
5 hereinbefore stated, a correct copy of which statement is hereto attached and marked "Exhibit A," and at the same time the petitioner delivered to said commissioners a letter containing further statements as to the facts, a correct copy of which is hereto attached and marked "Exhibit B." The said commissioners thereupon refused to cancel said assessment, but, notwithstanding petitioner's objections thereto, fixed it, as above stated, at the sum of $236,683, and have included and entered an assessment at that sum against the petitioner upon its personal estate or capital stock for the year 1897 in the assessment-rolls, prepared by said commissioners, and delivered by them to the board of aldermen of the city and county of New York, as hereinafter set forth. The petitioner is not advised in what manner the said commissioners arrived at this amount. There is no lawful method of dealing with the facts which would lead to this result. Under the method of assessment adopted by the commissioners, the correctness of which is not conceded, ten per cent. of the capital stock amounting to $90,000, should be deducted, thus reducing the assessments, in any event, to $146,683.

V. No evidence or information whatever other than the aforesaid statements of the petitioner was presented or known to or considered by said commissioners of taxes and assessments in making their determination. Said evidence was and is entirely uncontradicted; was accepted as sufficient by said commissioners, and no notice was ever given by the said commissioners to the petitioner that further or other evidence or information was required or desired by them, although the petitioner was ready and willing at all times to submit to the fullest examination by said commissioners concerning the same. The said statements were absolutely accurate, correct and true in every respect.

VI. Upon July 6, 1897, the assessment-rolls of real and personal estate in the city and county of New York for the year 1897, containing the assessment aforesaid against the petitioner at the sum of $236,683, were completed, transmitted and delivered by said commissioners of taxes and assessments to the board of aldermen of the city of New York and received and filed by said board,
6 and thereafter upon said day said commissioners gave public notice, as required by law, setting forth that the assessment-rolls of real and personal estate in said city for the year 1897 had been finally completed and had been delivered to the board of aldermen of said city and that such assessment-rolls would remain open to public inspection in the office of the clerk of said board of aldermen for a period of fifteen days from the date of said notice.

VII. The petitioner respectfully shows and specifies that the assessment aforesaid upon the personal property or capital stock of the petitioner and the decision or action of said commissioners of taxes and assessments of the city and county of New York, in imposing the same, were and are illegal and are erroneous by reason of overvaluation, and gives and specifies the particulars and grounds of said illegality, and the extent of such overvaluation, as the same are set forth in this petition and the exhibits attached thereto.

The total gross assets of the petitioner on said second Monday of January, 1897, were $629,953.99 and no more. From this sum, according to law, the said commissioners, before making an assessment upon petitioner's capital stock or personal property, should have deducted the following sum, which is not lawfully assessable in the city and county of New York as part of its personal property or capital stock, namely: Assessed value of real estate in New York county, $600,000. The balance of the petitioner's assets remaining after such deduction amounted to $29,953.99 and no more; that was the entire amount of its personal property. But the indebtedness of the petitioner upon the said second Monday of January, 1897, amounted to $230,000; and this, according to law, should have been deducted from its taxable assets. Deducting the assessed value of the petitioner's real estate from its gross assets, real and personal, its indebtedness, therefore, upon the said second Monday of January, 1897, exceeded the remainder by $200,046.01, as appears by the foregoing statement.

7 The tax imposed upon the capital stock of corporations by the tax laws (sec. 12) is a tax upon their property other than franchises. In the case of individuals the ownership of real estate subjects the owner to taxation upon the assessed value of the real estate and not otherwise. The fourteenth amendment to the Constitution of the United States provides (sec. 1) that no State "shall deny to any person within its jurisdiction the equal protection of the laws." Corporations are persons within the meaning of this provision. The commissioners of taxes and assessments have adopted an erroneous construction of the statute in question, in that they have construed it as subjecting the petitioner, because it owns real estate, to taxation not only upon the assessed value of the real estate, but also upon its actual cost, although the assessed value is the same as the actual value and much less than the actual cost. This construes the statute as imposing on one class of persons, namely, corporations, taxation at a greater rate than upon another class of persons by reason of ownership of property identically similar in character. Obviously, such a construction renders the statute unconstitutional. Moreover, it is inconsistent with the provision of the tax law that "the real estate of all incorporated companies liable to taxation shall be assessed in the tax district in which the same shall lie, *in the same manner* as the real estate of individuals." (Sec. 11.)

VIII. The petitioner, therefore, upon said second Monday of January, 1897, had no personal property or capital stock which was subject to assessment or taxation within the city and county of New

York, and the decision or action of the commissioners of taxes and assessments of said city and county in assessing the petitioner thereon and the assessment amounting to $236,683 imposed by them upon the personal property or capital stock of the petitioner as above stated, were and are illegal by reason of the particulars and grounds specified and given in this petition and the exhibits
8 attached thereto, and the same were and are erroneous by reason of overvaluation inasmuch as the petitioner had upon said second Monday of January, 1897, no personal property or capital stock subject to taxation within the said city and county. The petitioner is or will be injured by such illegal and erroneous assessment, because the president of the board of aldermen in the name of the board and as one of its acts, has already authorized and requested the commissioners of taxes and assessments to estimate and compute the taxes to be imposed under and by virtue of said rolls, and to cause the said estimation and computation to be properly set down and extended in the said tax or assessment rolls, and to perform such other duty connected with the said tax or assessment rolls or books as the said president is authorized or required by law to have done. And unless said assessment be reviewed according to law and canceled the petitioner will be compelled to pay taxes thereon at the rate at which taxes may be payable, notwithstanding that upon the second Monday of January, 1897, it had and now has no taxable personal property or capital stock within the city and county of New York. No previous application has been made in the premises for the allowance and issue of a writ of *certiorari*.

Wherefore, the petitioner prays that a writ of *certiorari* may be issued and allowed by this honorable court, directed to the commissioners of taxes and assessments for the city and county of New York, commanding them to certify and return to this court all and singular their proceedings, decisions and action in the premises, with the reasons therefor, and the evidence considered by them, and the dates respectively, and all and singular said assessments and the documents and papers before them relating thereto, touching or concerning the valuation or assessment of the personal property or capital stock of the petitioner, or in anywise in respect thereto, and all and singular their decisions and actions thereon and the statement and protests, record and papers before them
9 touching or concerning the same, and that the said decision and action of said commissioners may be reviewed and corrected on their merits and that the same may be reversed and altogether held for nothing, and that the aforesaid errors may be corrected according to law, or that the petitioner may have such other or further relief in the premises as may be meet.

And the petitioner will ever pray, &c.

THE NEW YORK CLEARING HOUSE BUILDING COMPANY,

[SEAL.] By G. G. WILLIAMS, *President.*

OPDYKE, WILLCOX & BRISTOW,

Attorneys for Petitioner, 20 *Nassau Street, New York.*

CITY AND COUNTY OF NEW YORK, *ss.*:

G. G. Williams, being duly sworn, says that he is the president of The New York Clearing House Building Company, the petitioner above named; that the foregoing petition is true to his own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true; that the grounds of deponent's belief as to all matters in said petition not stated upon his knowledge are his familiarity with said petitioner's business affairs as said president thereof; that the reason why this verification is not made by the said petitioner is that the said petitioner is a domestic corporation, and unable to make the same.

G. G. WILLIAMS.

Sworn to before me this 13th day of July, 1897.
[SEAL.] NEWTON B. PHELPS,
Notary Public, N. Y. Co.

10 EXHIBIT A.

City of New York, department of taxes and assessments.

COMMISSIONERS' OFFICE,
STEWART BUILDING, 280 BROADWAY.

☞ Please state the full name of the corporation.

Statement made and delivered to the commissioners of taxes and assessments of the city and county of New York for and in behalf of the New York Clearing House Building Company, showing its condition, for the purpose of assessment, on the second Monday of January, 1897.

Total gross assets, including real estate		$629,953 99
Of above—real estate	$600,000 00	
personal property	$29,953 99	
Capital stock actually paid in, or secured to be paid in		$900,000 00
Amount of surplus earnings		$ None.
Rate of dividend for last year, or last annual dividend		$ None.
Amount actually paid for real estate owned by you		$1,036,728 66

Actual value at which such real estate is carried on your books as an asset:

Nominally at cost for the purpose of balancing accounts and not otherwise.

Indebtedness in detail as follows:

Loan from the New York Clearing House Association	$230,000

Has any portion of above indebtedness been contracted or incurred in the purchase of non-taxable property or securities, or for the purpose of evading taxation? No.

11 Assessed value of real estate:
Describing particularly by ward and ward map numbers.

Ward 1, ward map No. 1028, Cedar street.....	$600,000
Amounts invested in the stocks of other corporations which are taxed upon their capital.....	$ None.
Amount invested in U. S. securities.....	$ None.

If the stock of the company is worth *less than par*, state the *actual value*, and give the facts under oath which will justify such estimate of its value.

The stock of the company on January 11, 1897, was worth less than par. Its actual value is above stated as $629,953.99, against which the company owes $230,000, leaving net $399,953.99. The facts upon which this statement of its value is based, are as follows: Its personal property amounted to $29,953.99. Its only other property consisted of the parcel of real estate above described. The company paid for this land the amount of $575,000. Since purchasing this land the company has expended in erecting a building thereon the amount of $461,728.66, of which, $230,000 were loaned to it by the New York Clearing House Association, which holds all the shares of stock of the company, and for whose use the said building was specially constructed. The said building was planned, arranged and fitted expressly for the purpose of the operations of the said Clearing House Association in effecting the daily exchanges between the banks which are members thereof, and in settling the balances arising upon such exchanges. The operations of the clearing-house required a low, broad building with large rooms well lighted and easily accessible. The character of the building is, therefore, widely different from the business buildings in the lower part of the city, and is not fitted for any other use than that for which it was designed, namely, that of a bank clearing house. The building, therefore, does not add to the value of the land as

12 real estate. The amount for which the company's real estate would sell under ordinary circumstances does not exceed its assessed value of $600,000.

The principal office or the place of transacting the financial business of the said corporation is situated in the first ward of the city of New York, at No. 77 Cedar St.

CITY OF NEW YORK, *ss:*

I, Wm. Sherer, the manager of the said corporation, being duly sworn, do hereby certify and declare that the foregoing statement is in all respects just and true.

WILLIAM SHERER, *Manager.*

Sworn to before me this 29th day of April, 1897.

C. E. BACON,
Notary Public.

[NOTARIAL SEAL.]

Cert. filed in New York.

☞ The commissioners are empowered to examine, under oath, the person representing the corporation, if they deem it necessary, to obtain any fuller or further particulars as to its property or condition.

13 EXHIBIT B.

Wm. S. Opdyke. David Willcox. Wm. B. Bristow.

Opdyke, Willcox & Bristow, 20 Nassau St., New York.

APRIL 29, 1897.

To the commissioners of taxes and assessments of the city and county of New York:

The New York Clearing House Building Company, in handing you the accompanying statement showing its condition for purposes of assessment on the second Monday of January, 1897, insists that its capital stock is not subject to any assessment for taxation for the current year, after making the deductions authorized by law.

The statement shows that, while its nominal capital stock is $900,000, it owes $230,000, and its only assets are its real estate in Cedar street, New York, and personal property of the value of $29,953.99.

Its real estate has been assessed for taxation at $600,000, and the company insists that the value of this real estate for purposes of taxation does not, as a matter of fact, exceed this said assessed value of $600,000. The company paid for the land embraced in this property $575,000. It has expended a large amount in putting up a building on this land for a special purpose, but this building is not fitted for general purposes, and so far as the market value of the property for sale is concerned, the building has not added to the value of the land. Since the property is to be assessed for taxation at the value for which it would under ordinary circumstances sell, the value of this real estate does not exceed $600,000.

14 Therefore, after making the deductions of the assessed value of the real estate and the company's obligations, the company is not assessable for any amount for the current year.

Moreover, whatever the commissioners may consider the value of this real estate, irrespective of the amount for which it has been assessed by them as real estate, the company insists that it is not assessable in respect to its capital stock by reason of its ownership of this real estate, in any amount in excess of its assessed value. The "capital stock" subjected to taxation in this State is merely the real and personal property owned by the corporation and its franchises. The real estate has been assessed as such. The company, as owner of this property, cannot be subjected to a greater

amount of assessment and taxation in respect thereto, because it happens to be a corporation instead of an individual. An individual owning the building would pay taxes in respect to his ownership of such property only upon the assessed value thereof, and no different rule can be applied in the case of ownership by a corporation. Any such rule would be in violation of the 14th amendment of the Constitution of the United States, under which corporations and individuals are alike entitled to the equal protection of the laws.

Therefore, even if the commissioners should believe that the company's real estate has a margin of value, by reason of its cost or otherwise, above its assessed valuation, it is insisted that, in valuing the company's capital stock for assessment, no such margin of value can be added to the other property of the company. The company's real estate has been already assessed. No portion of the value of this land can be considered as a portion of the company's personal estate. This would be admitted in the case of an individual, and the laws of the State of New York provide that the manner of assess-
15 ment and taxation of the property of corporations must be the same as that of individuals, and the United States Constitution guarantees to corporations, like other citizens, the equal protection of the laws.

Since, therefore, the debts of the company exceed the value of its personal property, and its real estate has already been assessed at its full value, and, even if the latter statement is not admitted, the commissioners have no power to assess the corporation upon its capital stock in respect of any margin of value of its real estate; it is insisted that the company is not liable to any assessment upon its capital stock. The company, therefore, applies to have any assessed valuation upon the stock of the company stricken from the annual record of assessed valuation of real and personal estate for the present year.

Yours respectfully,

N. Y. CLEARING HOUSE BUILDING CO.
OPDYKE, WILLCOX & BRISTOW, *Att'ys.*

16 *Writ of Certiorari.*

The People of the State of New York on the relation of The New York Clearing House Building Company to Edward P. Barker, Theodore Sutro, and James L. Wells, Esqrs., commissioners of taxes and assessments for the city and county of New York, Greeting:

Whereas we have been informed by the duly verified petition of the petitioner, The New York Clearing House Building Company, that certain proceedings were had before you in regard to the assessment and taxation for the year 1897 of the said petitioner, and that you have decided to assess the said petitioner upon and in respect of the personal property or capital stock held by it, upon the second Monday of January, 1897, in the sum of $236,683, and found that

it is assessable at that sum for the year 1897, and have refused to correct or cancel the said assessment upon the petitioner's application, although the same was claimed to be illegal and erroneous, by reason of overvaluation, because the petitioner then had and now has no personal property or capital stock within the city and county of New York subject to taxation, and you have included the said assessment in the assessment rolls for the year 1897, prepared by you for delivery to the board of aldermen of the city and county of New York and delivered to said board, and it is specified in said petition that the said assessment is illegal, giving the particulars of the alleged illegality, and is erroneous by reason of overvaluation, stating the amount of such overvaluation, and that the petitioner will be injured by such alleged illegal or erroneous assessment, and fifteen days have not expired since such delivery of said assessment-rolls, and we, being willing for certain causes to be certified of such proceedings and of the action had by and before you, the said commissioners, in the matter of the assessment for taxation of the petitioner for the year 1897, and of the decision made by
17 you on the application of the said petitioner in that regard, do command you that you certify and return under your hands and as amply as the same remains before you:

First. Those proceedings regarding the said assessment against the petitioner with all things appertaining thereto, and with that part of the record of valuation and assessment relating to the same.

Second. Any and all papers submitted by the petitioner and filed with you, and any examination under oath or otherwise of said petitioner.

Third. Any other evidence or information, if any, before you or considered by you in arriving at your decision, and if there were no such other evidence or information that you so state.

Fourth. Your reasons for arriving at such decision and the method adopted by you in arriving at the same and under what law and by virtue of what power the said assessment is made.

Unto our supreme court at a special term, part II thereof, to be held in the court-house, in the city of New York, on the first Monday of September, 1897, at the opening of court on that day, or as soon thereafter as a hearing can be had, so that our supreme court may further cause to be done thereupon what of right and according to law ought to be done, and have you then and there this writ; and the return hereto must be made and served upon the relator's attorney within the time above specified.

Witness, Hon. Charles H. Traux, one of the justices of said supreme court, at the court-house, in the city of New York, on the 14th day of July, 1897.

By the court:

[SEAL.] HENRY D. PURROY, *Clerk.*

OPDYKE, WILLCOX & BRISTOW,
Attorneys for Relator, 20 Nassau Street, New York.

18 The foregoing writ is allowed this 14th day of July, 1897.
CHARLES H. TRUAX, *J. S. C.*

To Messrs. Edward P. Barker, Theodore Sutro, and James L. Wells, commissioners of taxes and assessments for the city and county of New York:

Please take notice that a writ of *certiorari* has been duly granted herein, of which the foregoing is a copy, and the original of which is herewith exhibited to you, and will be forthwith filed in the office of the clerk of this court.

Dated New York, July 14, 1897.

Yours, &c., OPDYKE, WILLCOX & BRISTOW,
Attorneys for Relator.

19 *Return.*

(Writ.)

The People of the State of New York on the relation of The New York Clearing House Building Company to Edward P. Barker, Theodore Sutro, and James L. Wells, Esqs., commissioners of taxes and assessments for the city and county of New York, Greeting:

Whereas, we have been informed by the duly verified petition of the petitioner, The New York Clearing House Building Company, that certain proceedings were had before you in regard to the assessment and taxation for the year 1897 of the said petitioner, and that you have decided to assess the said petitioner upon and in respect of the personal property or capital stock held by it, upon the second Monday of January, 1897, in the sum of $236,683, and found that it is assessable at that sum for the year 1897, and have refused to correct or cancel the said assessment upon the petitioner's application, although the same was claimed to be illegal and erroneous, by reason of overvaluation, because the petitioner then had and now has no personal property or capital stock within the city and county of New York subject to taxation, and you have included the said assessment in the assessment-rolls for the year 1897, prepared by you for delivery to the board of aldermen of the city and county of New York, and delivered to said board, and it is specified in said petition that the said assessment is illegal, giving the particulars of the alleged illegality, and is erroneous by reason of overvaluation, stating the amount of such overvaluation, and that the petitioner will be injured by such alleged illegal and erroneous assessment, and fifteen days have not expired since such delivery of said assessment-rolls and we being willing for certain causes to be certified of such proceedings and of the action had by and before you, the said commissioners, in the matter of the assessment for taxa-

20 tion of the petitioner for the year 1897, and of the decision made by you on the application of the said petitioner in that regard, do command you that you certify and return under your hands and as amply as the same remains before you:

First. Those proceedings regarding the said assessment against the petitioner with all things appertaining thereto, and with that part of the record of valuation and assessment relating to the same.

Second. Any and all papers submitted by the petitioner and filed with you, and any examination under oath or otherwise of said petitioner.

Third. Any other evidence or information, if any, before you or considered by you in arriving at your decision, and if there were no such other evidence or information that you so state

Fourth. Your reasons for arriving at such decision and the method adopted by you in arriving at the same and under what law and by virtue of what power the said assessment is made.

Unto our supreme court at a special term, part II thereof, to be held in the court-house, in the city of New York, on the first Monday of September, 1897, at the opening of court on that day, or as soon thereafter as a hearing can be had, so that our supreme court may further cause to be done thereupon what of right and according to law ought to be done, and have you then and there this writ; and the return hereto must be made and served upon the relator's attorney within the time above specified.

Witness Hon. Charles H. Truax, one of the justices of said supreme court at the court-house, in the city of New York, on the 14th day of July, 1897.

By the court:

[SEAL.] HENRY D. PURROY, *Clerk.*

OPDYKE, WILLCOX & BRISTOW,
Attorneys for Relator, 20 *Nassau Street, New York.*

21 Supreme Court, City and County of New York.

THE PEOPLE OF THE STATE OF NEW YORK on the Relation of The New York Clearing House Building Co.	
against	Taxes of 1897.
EDWARD P. BARKER, THEODORE SUTRO, and James L. Wells, the Commissioners of Taxes and Assessments of the City of New York.	

To the supreme court of the State of New York:

We, Edward P. Barker, Theodore Sutro and James L. Wells, commissioners of taxes and assessments of the city of New York, respectfully return to the writ of *certiorari* hereto prefixed and issued out of this court on the 14th day of July, 1897, as follows:

Between the first Monday of September, in the year 1896, and the second Monday of January, 1897, the deputy tax commissioners of the city of New York, under our direction, assessed all the taxable property in the several districts of said city that were assigned to them respectively for that purpose, and furnished to us under oath, a detailed statement of all such property; that said deputies

have personally examined each and every house, building, lot, pier or other assessable property, giving the street and ward map number of such real estate embraced within said districts, together with the name of the owner or occupant, if known; also, in their judgment, the sum for which such property, under ordinary circumstances, would sell, with such other information in detail, relative to personal property or otherwise, as the commissioners
22 of taxes or assessments from time to time required; and the assessed valuations so made of all such property within the city of New York were duly entered in detail in books provided for that purpose by the comptroller, and kept in our office in the city of New York, called "The annual record of assessed valuation of real and personal estate." The deputy tax commissioner assigned to that duty, under our direction, between said times, duly assessed the personal property (capital and surplus) of the relator for the year 1897, at the sum of nine hundred thousand ($900,000.00) dollars, and duly entered such assessment in the said books, and thereafter notice of such assessment was sent to said relator.

The said books were kept open in our office, for examination and correction, from the second Monday of January, 1897, until the first day of May, 1897, and previous to and during the time said books were open for inspection the fact was duly advertised according to law. During the time said books were open to public inspection, as above stated, written application was made by the said relator to have the assessed valuation corrected. And thereupon the said relator submitted to us, and filed in our office, a statement in writing, of which a copy marked "Schedule A," is hereto attached and made part of this return. Thereupon we examined into the complaint so made by the relator and considered such application and fixed the amount of such assessment at the sum of two hundred and thirty-six thousand six hundred and eighty-three ($236,683.00) dollars, which we believed to be just, and which we decided to be the sum for which said relator was lawfully assessable for the year 1897, and thereupon said assessment theretofore entered in said books of annual record was corrected in accordance with our decision. A copy of said assessment, as it appears upon said books of annual record, marked "Schedule B," is hereto annexed and made part of
23 this return. The figures erased on said schedule indicate the original assessment made by the deputy tax commissioner.

Thereafter, we caused to be duly prepared from said books of annual record assessment-rolls for each of the several wards of the said city, and annexed to each of said rolls our certificate that the same was correct, in accordance with the entry in said books of record, and on the sixth day of July, 1897, the rolls thus certified were delivered by us to the board of aldermen of the city of New York, at the city hall in said city.

We further return that the method by which we made our said assessment for the purpose of taxation for the year 1897, was as follows:

Prior to making this assessment we had been advised by the

court of appeals that the law governing the taxation of corporations, to wit, chapter 456 of the Laws of 1857, required the valuation of the whole property owned by the corporation, whether real or personal, or both, in order to ascertain the capital which was the subject of taxation, and that from the aggregate of the whole property, when ascertained, was to be deducted the assessed value of the real estate, and, after a further deduction of debts and any exemptions allowed by law, the balance was the capital of the corporation subject to assessment.

On the second Monday of January, 1897, the deputy tax commissioner assigned to that duty duly assessed, for the purposes of taxation for the year 1897, the personal property of the relator (capital and surplus) at the sum of $900,000.00.

Thereafter, and within the time required by law, the relator filed with us, upon an application for the revision and correction of the assessment now under review, what purported to be an exhibition of its condition for the purposes of assessment for the year 1897, verified by William Sherrer, its manager, on the 29th day of April, 1897, and a written argument of its counsel, claiming to pro-
24 pound to us the law which should govern our action upon the application of the relator for the cancellation of the assessment now under review.

For the reasons which are hereinafter set out more at large, we declined to accept the conclusions of counsel for the relator as a correct statement of the law, but being, on the contrary, advised that upon the facts the assessment as fixed by us was in entire accordance with the law which should govern our action, and, being satisfied that the said assessment was in all respects just and proper, we finally fixed the assessment against the capital and surplus of the relator for the purposes of taxation for the year 1897 at the sum of $236,683.00.

The relator had sued out its writ of *certiorari* to review the assessment against it upon its personal property (capital and surplus) for the purposes of taxation for the year 1896, and from the proceedings had before us in relation to the assessment for 1896, the undisputed facts were that the relator was a domestic corporation having a paid-up capital of $900,000.00. That its assets consisted of a parcel of land on Cedar street and a building erected thereon, which, together, had cost about $965,000.00. That its personal assets, consisting of the equipment of the building and cash on hand, amounted to $130,049.02. That its indebtedness was $329,050.28, and that the said indebtedness at that time was made up of two items, money borrowed in the sum of $230,000.00 and money owing on a building contract amounting to the sum of $99,050.28. That the assessed value of the real estate of the relator was in the year 1896, $600,000.00.

In its application filed with us relating to the assessment for 1897 the item of indebtedness for money borrowed on the building contract had entirely disappeared, and, from its statement, we ascertained that the claim of the relator was that it had no property

subject to taxation under the provisions of chapter 456 of the
25 Laws of 1857, either real or personal, or both, in excess of the sum of $629,953.99, and that of the said total valuation of its property, it charged $600,000.00 to real estate, claiming that the assessed value which was that figure represented the actual value of its real estate, and that in addition it was possessed of personal property amounting to $29,953.99, and that, deducting the assessed value of the real estate from the total of $629,953.99, while leaving an apparent balance liable to taxation of $29,953.99 as personal property, was subject to a further reduction of $230,000.00, its indebtedness, leaving nothing assessable as capital and surplus.

We ascertained, however, that in the statement of its total gross assets, as indicated above, the relator had included its real estate at its assessed value, but we learned from its admissions, first, that the amount actually paid for real estate was the sum of $1,036,728.66, of which $577,000.00 had been paid for the land, being a plot in Cedar street, between Broadway and Nassau, and $461,728.66 for the improvements upon that plot, and that the actual value at which the said real estate was carried on the books of the relator as an asset was at the cost price, the reason given, however, being that it was so carried for the purpose of balancing accounts and not otherwise.

From the said statement we further ascertained that the relator had no debts in excess of the sum of $230,000.00.

We, therefore, as we had been instructed by the courts was our duty in like case, determined the value of the whole property of the corporation to be $1,066,682.65, and from that sum we deducted the assessed value of the real estate, $600,000.00, its indebtedness amounting to $230,000.00 and fixed the taxable balance at $236,682.65.

Substantially the claim of the relator, urged before us and based upon no proof whatever except the affidavit of its manager, who was neither shown nor asserted to be conversant with the
26 values of real estate or qualified in anywise to testify as an expert, was that while the company had paid for the land the sum of $575,000, and had thereafter erected upon the plot a building at a cost of $461,728.66, that the building added nothing to the value of the land, and that in determining the value of the gross assets of the relator, that substantially we should eliminate the structure.

The building in question is situated in the business part of the city and is a structure with which we were entirely familiar, and we know that as a matter of fact the building was not as a whole devoted to the uses of the relator, but that the Chase national bank occupied a large portion of the building. Therefore, we rejected it, first, as an allegation made with no proof to support it; and, second, upon our own knowledge of the facts as wholly unwarranted the claim of the relator before us that the assessed value was the true value of its real estate, and decided that no injustice was done the relator by taking the cost as the true measure of value in determin-

ing the total of the real estate, both ground and building, of this corporation.

The relator in its statement to us showed no surplus earnings or any dividend declared or paid, and, therefore, we are advised by counsel, and so return, that the claim in the petition that the relator was entitled to a reduction of ten per cent. of the capital stock is altogether erroneous, and that though no such claim was made to us, we were correct in refusing to make such deduction from the taxable value of the property of the corporation.

While we are advised by counsel that the allegations in the petition which are conclusions of law need not be controverted by us in this return, nevertheless we deny, as is alleged in the said petition, that any provision of the Constitution of the United States has been violated, or that in our application of the law—namely, of chapter 456 of the Laws of 1857—to the facts made to appear to us on this assessment, is an illegal or unconstitutional construc-
27 tion, or that in any respect whatever any principle of law has been violated to the detriment of the petitioner.

With regard to the statements contained in said writ, and the petition upon which the same was granted, to the effect that said assessment is erroneous by reason of overvaluation, or is unequal in that it was made at a higher proportionate valuation than other real or personal property on the same rolls, or that the said assessment, upon any of the grounds specified in said petition, is illegal, erroneous or void, we certify and return, upon information and belief, that each and every of such statements is untrue.

In witness whereof, we have hereunto subscribed our names, this — day of ——, 189–.

E. P. BARKER,
JAMES L. WELLS,
Commissioners of Taxes and Assessments.

CITY AND COUNTY OF NEW YORK, *ss:*

Edward P. Barker, Theodore Sutro and James L. Wells, being severally duly sworn, say, and each for himself says, that the foregoing return is true to his knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

E. P. BARKER.
JAMES L. WELLS.

Sworn to before me this 23d day of November, 1897.

C. ROCKLAND TYNG,
Notary Public, New York County.

28 (SCHEDULE A.)

City of New York, department of taxes and assessments.

COMMISSIONERS' OFFICE,
STEWART BUILDING, 280 BROADWAY.

☞Please state the full name of the corporation.

Statement made and delivered to the commissioners of taxes and assessments of the city and county of New York for and in behalf of the New York Clearing House Building Company, showing its condition for the purpose of assessment, on the second Monday of January, 1897.

Total gross assets, including real estate		$629,953 99
Of above—real estate	$600,000.00	
Personal property	$29,953.99	
Capital stock actually paid in, or secured to be paid in.		$900,000 00
Amount of surplus earnings		None.
Rate of dividend for last year, or last annual dividend		None.
Amount actually paid for real estate owned by you.		$1,036,728 66
Actual value at which such real estate is carried on your books as an asset		Nominally at cost for the purpose of balancing accounts and not otherwise.

Indebtedness in detail as follows:

Loan from the New York Clearing House Association	$230,000 00

29 Has any portion of above indebtedness been contracted or incurred in the purchase of non-taxable property or securities, or for the purpose of evading taxation? No.

Assessed value of real estate, describing particularly by ward and ward map numbers:

Ward 1, ward map No. 1028 Cedar street, $600,000.

Amounts invested in the stocks of other corporations which are taxed upon their capital. None.

Amount invested in U. S. securities. None.

(If the stock of the company is worth less than par, state the actual value, and give the facts under oath which will justify such estimate of its value.)

The stock of the company on January 11, 1897, was worth less than par. Its actual value is above stated as $629,953.99, against which the company owes $230,000, leaving net, $399,953.99. The facts upon which this statement of its value is based are as follows: Its personal property amounted to $29,953.99. Its only other

property consisted of the parcel of real estate above described. The company paid for its land the amount of $575,000. Since purchasing this land the company has expended in erecting a building thereon the amount of $461,728.66, of which $230,000 were loaned to it by the New York Clearing House Association, which holds all the shares of stock of the company, and for whose use the said building was specially constructed. The said building was planned, arranged and fitted expressly for the purpose of the operations of the said Clearing House Association in effecting the daily exchanges between the banks which are members thereof and in settling the balances arising upon such exchanges. The operations of the clearing-house required a low, broad building, with large rooms well lighted and easily accessible. The character of the building is, therefore, widely different from the business buildings in the lower part of the city, and is not fitted for any other
30 use than that for which it was designed, namely, that of a bank clearing-house. The building, therefore, does not add to the value of the land as real estate. The amount for which the company's real estate would sell under ordinary circumstances does not exceed its assessed value of $600,000.

The principal office or the place of transacting the financial business of the said corporation is situated in the first ward of the city of New York, at No. 77 Cedar St.

CITY OF NEW YORK, *ss:*

I, Wm. Sherer, the manager of the said corporation, being duly sworn, do hereby certify and declare that the foregoing statement is in all respects just and true.

WM. SHERER, *Manager.*

Sworn to before me this 29th day of April, 1897.

C. E. BACON,

[L. S.] *Notary Public.*

Ctf. filed in New York.

☞ The commissioners are empowered to examine, under oath, the person representing the corporation, if they deem it necessary, to obtain any fuller or further particulars as to its property or condition.

31 Wm. S. Opdyke. David Willcox. Wm. B. Bristow.

Opdyke, Willcox & Bristow, 20 Nassau St., New York.

APRIL 29, 1897.

To the commissioners of taxes and assessments of the city and county of New York:

The New York Clearing House Building Company in handing you the accompanying statement showing its condition for purposes of assessment on the second Monday of January, 1897, insists that

its capital stock is not subject to any assessment for taxation for the current year after making the deductions authorized by law.

The statement shows that while its nominal capital stock is $900,000, it owes $230,000, and its only assets are its real estate in Cedar street, New York, and personal property of the value of $29,953.99.

Its real estate has been assessed for taxation at $600,000, and the company insists that the value of this real estate for purposes of taxation does not, as a matter of fact, exceed this said assessed value of $600,000. The company paid for the land embraced in this property $575,000. It has expended a large amount in putting up a building on this land for a special purpose, but this building is not fitted for general purposes, and so far as the market value of the property for sale is concerned, the building has not added to the value of the land. Since the property is to be assessed for taxation at the value for which it would, under ordinary circumstances, sell, the value of this real estate does not exceed $600,000.

Therefore, after making the deductions of the assessed value of the real estate and the company's obligations, the company is not assessable for any amount for the current year.

32 Moreover, whatever the commissioners may consider the value of this real estate, irrespective of the amount for which it has been assessed by them as real estate, the company insists that it is not assessable in respect to its capital stock by reason of its ownership of this real estate in any amount in excess of its assessed value. The "capital stock" subjected to taxation in this State is merely the real and personal property owned by the corporation and its franchises. The real estate has been assessed as such. The company as owner of this property cannot be subjected to a greater amount of assessment and taxation in respect thereto, because it happens to be a corporation instead of an individual. An individual owning the building would pay taxes in respect to his ownership of such property only upon the assessed value thereof, and no different rule can be applied in the case of ownership by a corporation. Any such rule would be in violation of the 14th amendment of the Constitution of the United States, under which corporations and individuals are alike entitled to the equal protection of the laws.

Therefore, even if the commissioners should believe that the company's real estate has a margin of value, by reason of its costs or otherwise above its assessed valuation, it is insisted that, in valuing the company's capital stock for asssesment, no such margin of value can be added to the other property of the company. The company's real estate has been already assessed. No portion of the value of this land can be considered as a portion of the company's personal estate. This would be admitted in the case of an individual, and the laws of the State of New York provide that the manner of assessment and taxation of the property of corporations must be the same as that of individuals, and the

33 United States Constitution guarantees to corporations like other citizens the equal protection of the laws.

Since, therefore, the debts of the company exceed the value of its personal property and its real estate has already been assessed, the commissioners have no power to assess the corporation upon its capital stock in respect to any margin of value of its real estate; it is insisted that the company is not liable to any assessment upon its capital stock. The company, therefore, applies to have any assessed valuation upon the stock of the company stricken from the annual record of assessed valuation of real and personal estate for the present year.

Yours respectfully,

N. Y. CLEARING HOUSE BUILDING CO.
OPDYKE, WILLCOX & BRISTOW, *Att'ys.*

34

SCHEDULE B.

Supreme Court, City and County of New York.

THE PEOPLE OF THE STATE OF NEW YORK on the Relation of The New York Clearing House Building Company
against
EDWARD P. BARKER, THEODORE SUTRO, and James L. Wells, the Commissioners of Taxes and Assessments of the City of New York.
} Taxes of 1897.

SCHEDULE B.

Page.	Line.	Name.	Principal office.	Ward.	Valuation.	Corrected amount.	Remarks
313	2173	New York Clearing House Building Co.....	77 Cedar...	1	[$900,000]*	$236,683	B. W.

[* Figures enclosed in brackets erased in copy.]

STATE OF NEW YORK, }
City of New York, } ss.:

I, Edward T. Taggard, one of the deputy tax commissioners of the city of New York, do depose and say, that the foregoing annual record of the assessed valuations of the personal estate of corporate companies and joint stock associations contains a detailed statement of the taxable personal property of such corporations and joint stock associations in this city, for the year one thousand eight hundred and ninety-seven (1897).

E. T. TAGGARD,
Deputy Tax Commissioner.

Sworn to before me, this the 9th day of January, 1897.

MORGAN J. O'BRIEN,
Justice of the Supreme Court.

35 *Order Dismissing Writ.*

At a special term, part III, of the supreme court, in and for the city and county of New York, held in the county court-house in said city on the 13th day of December, 1897.

Present: Hon. Miles Beach, justice.

(Title of Proceeding.)

The above-named relator having sued out a writ of *certiorari* to review the proceedings of the above-named respondents in assessing the personal property or capital stock of the relator for the year 1897 at the sum of $236,683, and the said writ having come duly on for argument:

Now, upon reading and filing the petition verified the 13th day of July, 1897, with the exhibits thereto attached, the order granting the writ of *certiorari* dated the 14th day of July, 1897, and the writ of *certiorari* therein allowed on the 14th day of July, 1897, and the return of the respondents thereto, with the schedules thereto attached, filed in the office of the clerk of the city and county of New York on the 23d day of November, 1897, and after hearing David Willcox, Esq., of counsel for the relator, in support of said writ, and James M. Ward, Esq., of counsel for the respondents, in opposition thereto:

Now, upon motion of Francis M. Scott, counsel to the corporation, it is—

Ordered, that the prayer of said petitioner be denied and the said writ of *certiorari* be, and the same hereby is, dismissed with costs to the respondents, to be taxed in accordance with chapter 269 of the Laws of 1880.

Enter.

M. B., *J. S. C.*

36 *Judgment.*

(Title of Proceeding.)

The above-named relator, having sued out a writ of *certiorari* to review the proceedings of the above-named defendants in assessing the personal property or capital stock of the relator for the year 1897, at the sum of $236,683, and the said writ having been duly argued, and an order having been duly entered herein in the office of the clerk of the city and county of New York on the 14th day of December, 1897, denying the prayer of the relator and dismissing the writ of *certiorari* herein with costs to the defendants, and the defendants having been duly taxed at the sum of $57.50:

Now, upon motion of Francis M. Scott, counsel to the corporation, it is—

Ordered and adjudged that the writ of *certiorari* herein be, and the same hereby is, dismissed; and it is—

Further ordered and adjudged that the above-named defendants Edward P. Barker, Theodore Sutro and James L. Wells, as commissioners of taxes and assessments of the city and county of New York,

recover of the above-named relator The New York Clearing House Building Company, the sum of $57.50 the amount of their costs as taxed, and that they have execution therefor.

Dated New York, December 21, 1897.

HENRY D. PURROY, *Clerk.*

37 *Notice of Appeal.*

(Title of Proceedings.)

SIRS: Please take notice that the relator, The New York Clearing House Building Company hereby appeals to the appellate division of this court for the first department from the order of Hon. Miles Beach, J., made herein, dated December 13, 1897, and entered and filed in the office of the clerk of the city and county of New York on the 14th day of December, 1897, dismissing a writ of *certiorari* to review the proceedings of the defendants Edward P. Barker, Theodore Sutro and James L. Wells, as commissioners of taxes and assessments of the city of New York, in assessing personal property or capital stock of the relator for the year 1897, and from each and every part of the said order, and also from the judgment entered thereupon and filed in the office of the clerk of the city and county of New York on the 21st day of December, 1897, and from each and every part of said judgment.

Dated New York, N. Y., December 24th, 1897.

Yours, &c.,

OPDYKE, WILLCOX & BRISTOW,
Attorneys for Relator, 20 Nassau Street, New York, N. Y.

To the clerk of the city and county of New York: Francis M. Scott, Esq., counsel to the corporation, 1 Tryon row, New York, N. Y.

38 *Waiver of Certification.*

(Title of Proceeding.)

It is hereby stipulated that the foregoing printed papers contain true copies of the notice of appeal, the judgment-roll filed herein, and of all the papers used in the court below in the above-entitled proceeding, and certification in pursuance of section 1353 of the Code of Civil Procedure is hereby waived.

Dated New York, N. Y., January 7th, 1898.

OPDYKE, WILLCOX & BRISTOW,
Attorneys for Relator and Appellant,
20 Nassau Street, New York, N. Y.
JOHN WHALEN,
Counsel to Corporation, Attorney for Respondents,
2 Tryon Row, New York, N. Y.

39 *Affidavit as to Opinion.*

(Title of Proceeding.)

CITY AND COUNTY OF NEW YORK, *ss.:*

David Willcox, being duly sworn, says:

I. He is one of the attorneys for the relator and appellant in the above-entitled proceeding.

II. On the 14th day of December, 1897, an order was made by Hon. Miles Beach, J., and duly entered herein, dismissing the writ of *certiorari*, the said order being made without any accompanying opinion, and no opinion whatever has, before or since, been made by any judge.

DAVID WILLCOX.

Sworn to before me this 7th day of January, 1898.

F. W. LONGFELLOW,
Notary Public, (55), *New York County, N. Y.*

40 *Order of Affirmance.*

At a term of the appellate division of the supreme court in and for the first department, held at the court-house thereof, at No. 111 Fifth avenue, in the county of New York, on the 13th day of January, 1899.

Present—

Hon. Charles H. Van Brunt, P. J.
Hon. George C. Barrett,
Hon. William Rumsey,
Hon. Edward Patterson,
Hon. Morgan J. O'Brien, } JJ.

(Title of Proceeding.)

The above-named relator, having appealed to the appellate division of the supreme court in and for the first department from the order herein entered and filed in the office of the clerk of the county of New York on the 14th day of December, 1897, dismissing the writ of *certiorari* herein with costs, and from the judgment herein entered and filed in the office of the clerk of the county of New York on the 21st day of December, 1897, dismissing the writ of *certiorari*, with $57.50 costs to the defendants, and the said appeal having come duly on to be heard, now, after hearing David Willcox, Esq., of counsel for the relator, in support of said appeal, and James M. Ward, Esq., of counsel for the defendants, in opposition thereto, and due deliberation having been had, upon motion of John Whalen, corporation counsel, it is unanimously

Ordered that the said order and judgment so appealed from as aforesaid be, and the same hereby are, affirmed, with costs and disbursements to the defendants.

Ent. C. H. V. B.

41 *Notice of Appeal to Court of Appeals.*

(Title of Proceeding.)

SIRS: Please take notice that the relator, The New York Clearing House Building Company, hereby appeals to the court of appeals of the State of New York from the order of the appellate division of the supreme court for the first department, entered and filed in the office of the clerk of said court on the 19th day of January, 1899, affirming the order herein, entered and filed in the office of the clerk of the county of New York on the 14th day of December, 1897, dismissing the writ of *certiorari* herein, and the judgment entered upon said order and filed in the office of the clerk of the county of New York on the 21st day of December, 1897.

Dated, (Manhattan), New York, N. Y., January 24th, 1899.

Yours, &c.,

OPDYKE, WILLCOX & BRISTOW,
Attorneys for Relator, 20 Nassau Street, Borough of Manhattan, New York, N. Y.

To John Whalen, Esq., corporation counsel, attorney for defendants, 2 Tryon row, borough of Manhattan, New York, N. Y.

William Sohmer, Esq., clerk of the county of New York, county court-house, borough of Manhattan, New York, N. Y.

42 *Stipulation Waiving Certification.*

(Title of Proceeding.)

It is hereby stipulated, by and between the attorneys for the respective parties hereto, that the foregoing printed papers contain true copies of the notice of appeal to the court of appeals, the order of the appellate division of the supreme court for the first department appealed from, and of all the papers upon which the said order of the said appellate division was founded, and certification thereof, pursuant to section 1315 of the N. Y. Code of Civil Procedure, is hereby waived.

Dated, borough of Manhattan, New York, N. Y., January 30th, 1899.

OPDYKE, WILLCOX & BRISTOW,
Attorneys for Relator and Appellant, 20 Nassau Street, Borough of Manhattan, New York, N. Y.

JOHN WHALEN,
Corporation Counsel, Attorney for Respondents, 2 Tryon Row, Borough of Manhattan, New York, N. Y.

43 *Affidavit as to Opinion.*

(Title of Proceeding.)

COUNTY OF NEW YORK, *ss:*

David Wilcox, being duly sworn, says:

I. He is a member of the firm of Opdyke, Willcox & Bristow, the attorneys for the relator and appellant in the above-entitled proceeding.

II. The order of the appellate division of the supreme court for the first department duly entered and filed in the office of the clerk of said court on the 19th day of January, 1899, affirming the order dismissing the writ of *certiorari* herein, and the judgment entered thereupon, was made by the said court without any accompanying opinion.

DAVID WILLCOX.

Sworn to before me this 30th day of January, 1899.

J. V. SMITH,
Notary Public, Kings County.

Cert. filed in New York county.

44 Court of Appeals of New York.

THE PEOPLE OF THE STATE OF NEW YORK on the Relation of The New York Clearing House Building Company, Complainant and Appellant, *against* EDWARD P. BARKER, THEODORE SUTRO, and JAMES L. WELLS, Commissioners of Taxes and Assessments of the City and County of New York, Defendants and Appellees. } Taxes of 1897.

In this cause application having been made to the Honorable Alton B. Parker, chief justice of the court of appeals of the State of New York, that being the highest court of record in this State in which said cause can be heard, for the allowance of a writ of error to remove said cause to the Supreme Court of the United States for review in accordance with the Constitution and laws of the United States and the rules and practice of the Supreme Court of the United States, and for the fixing and approving of the bond on the removal of said cause to the Supreme Court of the United States, it is hereby ordered that said writ of error be, and the same is hereby, allowed, and the same may be issued by any officer authorized to issue the same, and the penalty in the bond is hereby fixed at the sum of one thousand dollars, with the Lawyers' Surety Company of New York City as surety thereon.

April 7th, 1899.

ALTON B. PARKER,
Chief Justice of the Court of Appeals of the State of New York.

45 To the Honorable Alton B. Parker, chief justice of the court of appeals of the State of New York:

And now comes The People of the State of New York on the relation of The New York Clearing House Building Company, by Opdyke, Willcox & Bristow, its attorneys, and complains that in the record and proceedings and also in the rendition of a judgment — a plea in the suit between The People of the State of New York on the relation of The New York Clearing House Building Company, relator, and Edward P. Barker, Theodore Sutro, and James L. Wells, commissioners of taxes and assessments of the city and county of New York, defendants, which is in the court of appeals of the State of New York, being the highest court of law and equity of the said State in which a decision could be had, the said court of appeals having rendered a decision affirming the said judgment theretofore rendered in the said supreme court on the 27th day of January, 1899, affirming the judgment of the special term of the said supreme court rendered on the 21st day of December, 1897, against the relator and in favor of the defendants for the sum of fifty-seven dollars and fifty cents ($57.50) costs, and dismissing the writ of certiorari sued out by the relator, wherein was drawn in question the validity of a statute of said State and of an authority exercised thereunder, on the ground of their being repugnant to the Constitution or laws of the United States, and the decision was in favor of such their validity, all which appear in the records and proceedings in said suit, manifest error hath happened, to the great damage of the said The New York Clearing House Building Company.

46 Wherefore the said The New York Clearing House Building Company, by its attorneys aforesaid, prays for the allowance of a writ of error and such other process as may cause the said error to be corrected by the Supreme Court of the United States.

OPDYKE, WILLCOX & BRISTOW,
Attorneys for the New York Clearing House Building Company.

47 [Endorsed:] Court of appeals of New York. The People of the State of New York on the relation of The New York Clearing House Building Company, plaintiff and appellant, against Edward P. Barker and others, commissioners of taxes, &c., defendants and appellees. (Taxes of 1897.) (Original.) Petition for writ of error and order allowing same. Opdyke, Willcox & Bristow, attorneys for plaintiff & appellant, No. 20 Nassau street, New York, N. Y.

48 UNITED STATES OF AMERICA, *ss*:

Seal of the U. S. Circuit Court, Northern District N. Y.

The President of the United States of America to the honorable the judges of the court of appeals of the State of New York, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said court of appeals, before you or some of you, being the highest court of law or equity of the

said State in which a decision could be had in the said suit between The People of the State of New York *ex rel.* The New York Clearing House Building Company, relator, and Edward P. Barker, Theodore Sutro, and James L. Wells, commissioners of taxes and assessments of the city and county of New York, defendants (taxes of 1897), wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute of or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity, or wherein was drawn in question the

49 construction of a clause of the Constitution or of a treaty or statute of or commission held under the United States and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said The New York Clearing House Building Company, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court, at Washington, within 30 days from the date hereof, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 26th day of April, in the year of our Lord one thousand eight hundred and ninety-nine.

W. S. DOOLITTLE,
Clerk of the United States Circuit Court,
North. District of New York,
By C. W. HIGGISON, *Deputy.*

Allowed by—
ALTON B. PARKER,
Chief Justice of the Court of Appeals
of the State of New York.

50 UNITED STATES OF AMERICA, *ss:*

To Edward P. Barker, Theodore Sutro, and James L. Wells, commissioners of taxes and assessments of the city and county of New York, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error filed in the

clerk's office of the New York court of appeals, in a suit wherein The People of the State of New York *ex rel.* The New York Clearing House Building Company are plaintiffs in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Alton B. Parker, chief justice of the court of appeals of New York, this 29th day of April, in the year of our Lord one thousand eight hundred and ninety-nine.

ALTON B. PARKER,
Chief Judge of the Court of Appeals of New York.

51 STATE OF NEW YORK, }
County of New York, } *ss.:*

On this 3rd day of May, in the year of our Lord one thousand eight hundred and ninety-nine, personally appeared John Monaghan before me, the subscriber, a notary public in and for the county of Kings, certificate filed in New York county, and makes oath that he delivered true copies of the within citation to James L. Wells, commissioner of taxes, &c., at 145 Broadway, Manhattan, N. Y. city; Theodore Sutro, commissioner of taxes, &c., at 280 Broadway, N. Y. city (Manhattan), and Edward P. Barker, commissioner of taxes, &c., at Hotel Bayard, 1703 Broadway, Manhattan, N. Y. city.

That said copies were all delivered to the aforesaid on the 2nd day of May, 1899.

JOHN MONAGHAN.

Sworn to and subscribed the 3rd day of May, A. D. 1899.

[Seal of J. V. Smith, Notary Public, Kings County.]

J. V. SMITH,
Notary Public, Kings County.

Cert. filed in New York county.

52 [Endorsed:] Court of appeals of New York. The People of the State of New York *ex rel.* The New York Clearing House Building Company, plaintiff in error, against Edward P. Barker and others, commissioners of taxes, &c., defendants in error. (Taxes of 1897.) Original. Citation and proof of service. Opdyke, Willcox & Bristow, attorneys for pl'ffs in error, No. 20 Nassau street, New York, N. Y. Service this day of a copy of the within citation is hereby admitted. Dated N. Y., May —, 1899. A copy of the within paper has been this day received at the office of the corporation counsel. May 2, 1899. John Whalen, corporation counsel.

53 In the Court of Appeals of the State of New York.

THE PEOPLE OF THE STATE OF NEW YORK on the Relation of The New York Clearing House Building Company, Relator,
against
EDWARD P. BARKER, THEODORE SUTRO, and JAMES L. WELLS, Commissioners of Taxes and Assessments of the City and County of New York, Defendants.
} Taxes of 1897.

The relator assigns the following errors in the final decision of this court, filed herein upon March 13, 1899:

I. The court erred in holding and deciding that the relator was not entitled to the remedy and relief prayed for in its petition and in affirming the order of the supreme court denying the prayer of said petition and dismissing the writ of certiorari theretofore issued pursuant to said petition.

II. The court erred in not ordering and adjudging that the order of the supreme court denying the prayer of the petition and dismissing the writ of certiorari be reversed, and that the prayer of said petition be granted and the assessment therein specified be stricken from the roll.

III. The court erred in denying to the relator the rights claimed by it in its said petition under the fourteenth amendment to the Constitution of the United States and in denying to the relator any relief on that ground.

IV. The court erred in not holding and adjudging that the assessment set forth in the relator's petition was contrary to the
54 provision of the fourteenth amendment to the Constitution of the United States securing to the relator the equal protection of the laws, and that the relator was entitled, upon that ground, to judgment striking said assessment from the roll.

V. The court erred in deciding in favor of the validity of the statutes of the State of New York and the authority exercised under said statutes pursuant to which the assessment specified in the relator's petition was imposed, notwithstanding that their validity was drawn in question on the ground of their being repugnant to the Constitution of the United States.

OPDYKE, WILLCOX & BRISTOW,
Attorneys for Relator.

55 [Endorsed:] N. Y. court of appeals. The People of the State of New York on the relation of The New York Clearing House Building Company, relator, against Edward P. Barker and others, commissioners of taxes, &c., defendants. (Taxes of 1897.) (Original.) Assignment of errors. Opdyke, Willcox & Bristow, attorneys for relator, No. 20 Nassau street, New York, N. Y.

56 Know all men by these presents that we, The New York Clearing House Building Company, as principal, and The Lawyers' Surety Company of New York City, as surety, are held and firmly bound unto Edward P. Barker, Theodore Sutro, and James L. Wells, commissioners of taxes and assessments of the city and county of New York, in the full and just sum of one thousand dollars, to be paid to the said Edward P. Barker, Theodore Sutro, and James L. Wells, commissioners of taxes and assessments of the city and county of New York, their certain attorney, successors, or assigns; to which payment, well and truly to be made, we bind ourselves, our successors or assigns, jointly and severally, by these presents.

Sealed with our seals and dated this 30th day of March, in the year of our Lord one thousand eight hundred and ninety-nine.

Whereas lately, at a session of the court of appeals of New York, in a suit depending in said court between The People of the State of New York *ex rel.* The New York Clearing House Building Company, relator, and Edward P. Barker, Theodore Sutro, and James L. Wells, commissioners of taxes and assessments of the city and county of New York, defendants, a decision was rendered against the said relator and affirming the judgment of the supreme court of the State of New York, the writ of certiorari issued in said suit, and the said relator, The New York Clearing House Building Company, having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the decision in the aforesaid suit, and a citation directed to the said Edward P. Barker, Theodore Sutro, and James L. Wells, commissioners of taxes and

57 assessments of the city and county of New York, citing and admonishing them to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date thereof:

Now, the condition of the above obligation is such that if the said The New York Clearing House Building Company shall prosecute its said writ of error to effect and answer all damages and costs if it fail to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

THE NEW YORK CLEARING HOUSE BUILDING CO.,
By G. G. WILLIAMS. [SEAL.]
THE LAWYERS' SURETY COMPANY OF NEW YORK,
[SEAL.] By THOMAS HUNT, *2d Vice-President.*
Attest: JOEL RATHBONE, *Secretary.*

Sealed and delivered in presence of—
H. G. HINTON,
As to L. S. Co.

Approved by—
ALTON B. PARKER,
Chief Justice of the Court of Appeals of New York.

58 Form No. 209.

STATE OF NEW YORK, } ss:
County of New York, }

On the 30th day of March, in the year 1899, before me personally came Thomas Hunt, to me known, who, being by me duly sworn, did depose and say, that he resided in the city of New York; that he is the 2d vice-president of the Lawyers' Surety Company of New York, the corporation described in and which executed the above instrument; that he knew the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that he signed his name thereto by like order; and that the liabilities of said company do not exceed its assets as ascertained in the manner provided in section 3, chapter 720, of the New York Session Laws of 1893.

[SEAL.] H. G. HINTON,
Notary Public, Kings County, N. Y.

Certificate filed in N. Y. Co.

At a stated meeting of the board of directors of the Lawyers' Surety Company of New York, held at the office of the company, Nos. 32, 34 and 36 Liberty street, in said city, on the 21st day of April, 1897, on motion, it was unanimously

"Resolved, That the president, the vice-president, the acting president or the second vice-president be, and either of them is, hereby authorized and empowered to sign, execute and deliver any and all bonds or undertakings for or on behalf of the company, and to attach thereto the seal of the corporation, the same to be attested by the secretary or the acting secretary."

COUNTY OF NEW YORK, ss:

I, Joel Rathbone, secretary of the Lawyers' Surety Company of New York, have compared the foregoing resolution with the original thereof, as recorded in the minute book of said company, and do certify that the same is a correct and true transcript therefrom, and of the whole of said original resolution.

Given under my hand and the seal of the company, at the city of New York, this 30th day of March, 1899.

[SEAL.] JOEL RATHBONE, *Secretary.*

59 [Endorsed:] N. Y. supreme court. The People of the State of New York *ex rel.* The New York Clearing House Building Company, plaintiff in error, against Edward P. Barker and others, commissioners of taxes and assessments, &c., defendants in error. (Taxes of 1897.) Bond.

60 STATE OF NEW YORK:

Court of Appeals, Clerk's Office.

I, W. H. Shankland, clerk of the court of appeals of the said State of New York, do hereby certify that the annexed papers constitute the original return and the whole thereof upon which the said court of appeals acted in rendering judgment herein, together with the remittitur of said court and the petition, order, writ of error, citation, copy of bond, and assignment of error to the United States Supreme Court herein.

Seal State of New York Court of Appeals.

In witness whereof I have hereunto set my hand and affixed my official seal, at the city of Albany, this twenty-ninth day of April, A. D. 1899.

W. H. SHANKLAND,
Clerk Court of Appeals, State of New York.

Endorsed on cover: File No., 17,399. New York court of appeals. Term No., 289. The People of the State of New York *ex rel.* The New York Clearing House Building Company, plaintiff in error, *vs.* Edward P. Barker, Theodore Sutro, & James L. Wells, commissioners of taxes & assessments of the city and county of New York. Filed May 6th, 1899.